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City of Huntington v. AmerisourceBergen Drug Corp. et al, 17cv01362		
Witness Name: June Howard (DEA- 30(b)(6))		
Deposition Date: 4/25/2019		
Defendants' Affirmative Designations (w/ Plaintiffs' Objections and Defendants' Replies)		
Designations	Objections	Reponses
12:16 - 12:20 12:16 Q. My name is Chris Eppich. I represent 12:17 McKesson in this litigation. 12:18 Would you please state your full name 12:19 for the record. 12:20 A. June Howard.		
13:23 - 14:06 13:23 Q. You understand that you're providing 13:24 testimony on behalf of DEA today? 13:25 A. Yes. 14:01 MR. EPPICH: I'd like to mark as 14:02 Exhibit 1 the amended notice of the deposition 14:03 of Ms. Howard. 14:04 (Howard Deposition Exhibit 1 marked for 14:05 identification and attached to the 14:06 transcript.)		
14:25 - 15:03 14:25 Q. Do you understand it to be the letter 15:01 authorizing your testimony on certain subjects 15:02 on behalf of DEA? 15:03 A. Yes.		
15:11 - 15:19 15:11 Q. If you could turn to page 6 and 15:12 topic 11. Topic 11 states, "Your practice of 15:13 notifying DEA-registered distributors when 15:14 another distributor terminated its relationship 15:15 with a customer due to the risk of diversion, 15:16 including when and why you disseminated [sic] 15:17 such practice." 15:18 Are you authorized by the DEA to testify 15:19 on this topic today?		
15:23 - 15:23 15:23 THE WITNESS: Yes.		
15:25 - 16:02 15:25 Q. And you're prepared to testify on this 16:01 topic here today? 16:02 A. Yes.		
17:24 - 18:08 17:24 Q. Now, you're currently the chief of the 17:25 reports analyst group unit -- or excuse me, 18:01 chief of the reports analyst unit; is that 18:02 correct? 18:03 A. Reports analysis unit. 18:04 Q. Thank you. 18:05 And is that -- is that a new -- is that 18:06 the same as the chief of the targeting and 18:07 analysis unit? 18:08 A. Yes.		

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19:10 - 19:13 19:10 Q. You were the chief of the targeting and 19:11 analysis unit from 1996 to 2010; is that 19:12 correct? 19:13 A. Correct.		
22:02 - 22:04 22:02 Q. Did you join the targeting and analysis 22:03 unit as the chief of that unit in 1996? 22:04 A. Yes.		
28:17 - 29:01 28:17 Q. Following the first of the distributor 28:18 briefings in 2005, DEA established an e-mail 28:19 group to announce actions taken by distributors 28:20 to either discontinue or limit supply to 28:21 customers. 28:22 A. Yes. 28:23 Q. And these termination notices identified 28:24 customers distributors had discontinued or 28:25 restricted business with, correct? 29:01 A. Correct.	Re: [28:17 to 29:01] Compound; Foundation; Assumes Facts	Re: [28:17 to 29:01] The question is not compound. Ms. Howard was DEA's 30(b)(6) witness on the "practice of notifying DEA-registered distributors when another distributor terminated its relationship with a customer" (see 15:11-19) and had an appropriate foundation of knowledge to answer this question. The question does not assume facts; it asks Ms. Howard to confirm whether certain facts are accurate, which she did.
29:19 - 30:01 29:19 Q. Did the DEA want distributors to make 29:20 informed decisions about the customers that they 29:21 signed up to distribute to? 29:22 A. Yes. 29:23 Q. DEA understood that distributors trying 29:24 to identify potential diversion would benefit 29:25 from access to more information than just their 30:01 own sales data and customer observations, right?	Re: [29:19 to 30:01] Speculation (29:23-30:1); Foundation (29:23-30:1); Scope (29:23-30:1)	Re: [29:19 to 30:01] The question does not call for speculation as it asks a DEA 30(b)(6) witness for the DEA's understanding. The question falls within the scope of the 30(b)(6) topic on which Ms. Howard was identified (see 15:11-19), such that she had an adequate foundation to respond.
30:06 - 30:06 30:06 THE WITNESS: Yes.	Re: [30:06 to 30:06] Speculation; Foundation; Scope (witness not designated for this topic)	Re: [30:06 to 30:06] Please see prior response.

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<p>30:08 - 30:11</p> <p>30:08 Q. And if the distributors knew the name of</p> <p>30:09 the pharmacies that had been cut off by other</p> <p>30:10 distributors, it could help them identify</p> <p>30:11 potential diversion, correct?</p>	<p>Re: [30:08 to 30:11]</p> <p>Speculation;</p> <p>Foundation; Calls for Expert Testimony</p>	<p>Re: [30:08 to 30:11]</p> <p>The question does not call for speculation as it asks a DEA 30(b)(6) witness for the DEA's understanding on a topic for which Ms. Howard was identified as a 30(b)(6) witness (see 15:11-19). The question does not call for expert testimony, as it is asked of the DEA, which is tasked with regulating diversion of controlled substances. Notably, the experts qualified to discuss methods to prevent diversion in this case have been qualified on the basis that they previously worked at the DEA, making the suggestion that the DEA itself lacks sufficient knowledge to respond inaccurate.</p>
<p>30:14 - 30:16</p> <p>30:14 THE WITNESS: The information is</p> <p>30:15 limited. They would need more than notification</p> <p>30:16 of pharmacies that have been cut off.</p>	<p>Re: [30:14 to 30:16]</p> <p>Speculation;</p> <p>Foundation; Calls for Expert Testimony</p>	<p>Re: [30:14 to 30:16]</p> <p>Please see prior response.</p>
<p>31:03 - 31:06</p> <p>31:03 Q. You would agree that the more</p> <p>31:04 information the distributor has on the pharmacy,</p> <p>31:05 the more helpful that would be to prevent</p> <p>31:06 diversion, correct?</p>	<p>Re: [31:03 to 31:06]</p> <p>Scope (witness not designated for this topic)</p>	<p>Re: [31:03 to 31:06]</p> <p>The question is within the scope of the noticed topic, which relates to information provided to distributors by the DEA and the reasons why the DEA stopped providing that information (see 15:11-19), which includes questioning about whether the DEA believed the information previously provided was useful to the recipient.</p>
<p>31:10 - 31:10</p> <p>31:10 THE WITNESS: Yes.</p>	<p>Re: [31:10 to 31:10]</p> <p>Scope (witness not designated for this topic)</p>	<p>Re: [31:10 to 31:10]</p> <p>Please see prior response.</p>
<p>31:12 - 31:14</p> <p>31:12 Q. Now, DEA considered the termination</p> <p>31:13 notices to be a valuable lead to identify the</p> <p>31:14 source -- a source of diversion, right?</p>	<p>Re: [31:12 to 31:14]</p> <p>Vague</p>	<p>Re: [31:12 to 31:14]</p> <p>The question is not vague, and the witness answered the question without issue.</p>

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<p>31:16 - 31:16</p> <p>31:16 THE WITNESS: Yes.</p>	<p>Re: [31:16 to 31:16] Vague</p>	<p>Re: [31:16 to 31:16] Please see prior response.</p>
<p>34:06 - 34:12</p> <p>34:06 Would you agree that the DEA knew and 34:07 understood that the vast majority of 34:08 distributors, upon receiving a termination 34:09 notice, they would conduct additional due 34:10 diligence or potentially stop supplying a 34:11 customer that another distributor had 34:12 terminated?</p>	<p>Re: [34:06 to 34:12] Lack of Foundation; Compound; Scope (witness not designated for this topic); Speculation; Vague</p>	<p>Re: [34:06 to 34:12] The question is within the scope of the noticed topic, which relates to information provided to distributors by the DEA and the reasons why the DEA stopped providing that information (see 15:11-19), which includes questioning about whether the DEA believed the information previously provided was useful to the recipient. The question is not vague or compound. The question does not call for speculation or lack foundation, as it asks a DEA 30(b)(6) witness for the DEA's understanding.</p>
<p>34:15 - 34:15</p> <p>34:15 THE WITNESS: Yes.</p>	<p>Re: [34:15 to 34:15] Lack of Foundation; Compound; Scope (witness not designated for this topic); Speculation; Vague</p>	<p>Re: [34:15 to 34:15] Please see prior response.</p>
<p>41:23 - 42:01</p> <p>41:23 Q. Was it DEA's general practice to perform 41:24 any type of investigation into the pharmacies 41:25 and doctors identified in the termination 42:01 notices sent to distributors?</p>	<p>Re: [41:23 to 42:01] Vague (including as to time-frame); Lack of Foundation; Compound; Scope (witness not designated for this topic); Speculation; Relevance</p>	<p>Re: [41:23 to 42:01] The question is not vague, including as to time period which was previously established as beginning in 2005 (see 28:17-29:01). The question is within the scope of the noticed topic, which relates to information provided to distributors by the DEA and the reasons why the DEA stopped providing that information (see 15:11-19). This topic fairly includes questioning about whether the DEA believed the information about a termination was relevant and warranted further action. The question does not call for speculation, as it asks for the DEA's own actions. The question is directly relevant to the issues of this case, including the DEA's expectations of and information-sharing with distributors.</p>

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42:06 - 42:06 42:06 THE WITNESS: I don't know.	Re: [42:06 to 42:06] Vague (including as to time-frame); Lack of Foundation; Compound; Scope (witness not designated for this topic); Speculation; Relevance	Re: [42:06 to 42:06] Please see prior response.
42:08 - 42:11 42:08 Q. Was it DEA's general practice to use 42:09 ARCOS to investigate any of the pharmacies and 42:10 doctors identified in the termination notices 42:11 sent to distributors?	Re: [42:08 to 42:11] Vague (including as to time-frame); Lack of Foundation; Compound; Scope (witness not designated for this topic); Speculation; Relevance	Re: [42:08 to 42:11] Please see prior response.
42:15 - 42:15 42:15 THE WITNESS: I don't know.	Re: [42:15 to 42:15] Vague (including as to time-frame); Lack of Foundation; Compound; Scope (witness not designated for this topic); Speculation; Relevance	Re: [42:15 to 42:15] Please see prior response.
42:17 - 42:19 42:17 Q. Was it DEA's general practice to set up 42:18 any monthly monitoring of the pharmacies and 42:19 doctors identified in the termination notices?	Re: [42:17 to 42:19] Vague (including as to time-frame); Lack of Foundation; Compound; Scope (witness not designated for this topic); Speculation; Relevance	Re: [42:17 to 42:19] Please see prior response.
42:23 - 42:23 42:23 THE WITNESS: I don't know.	Re: [42:23 to 42:23] Vague (including as to time-frame); Lack of Foundation; Compound; Scope (witness not designated for this topic); Speculation; Relevance	Re: [42:23 to 42:23] Please see prior response.
42:25 - 42:25 42:25 Q. DEA had that capability, didn't it?	Re: [42:25 to 42:25] Vague (including as to time-frame); Lack of Foundation; Compound; Scope (witness not designated for this topic); Speculation; Relevance	Re: [42:25 to 42:25] Please see prior response.
43:04 - 43:05 43:04 THE WITNESS: Can you repeat? The 43:05 capability to do what?	Re: [43:04 to 43:05] Vague (including as to time-frame); Lack of Foundation; Compound; Scope (witness not designated for this topic); Speculation; Relevance	Re: [43:04 to 43:05] Please see prior response.

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<p>43:07 - 43:09</p> <p>43:07 Q. The capability to set up a monthly</p> <p>43:08 monitoring of the pharmacies and doctors that</p> <p>43:09 were identified in these termination notices.</p>	<p>Re: [43:07 to 43:09]</p> <p>Vague (including as to time-frame); Lack of Foundation; Compound; Scope (witness not designated for this topic); Speculation; Relevance</p>	<p>Re: [43:07 to 43:09]</p> <p>Please see prior response.</p>
<p>43:11 - 43:12</p> <p>43:11 THE WITNESS: We had the capability.</p> <p>43:12 Yes.</p>	<p>Re: [43:11 to 43:12]</p> <p>Vague (including as to time-frame); Lack of Foundation; Compound; Scope (witness not designated for this topic); Speculation; Relevance</p>	<p>Re: [43:11 to 43:12]</p> <p>Please see prior response.</p>
<p>43:14 - 43:19</p> <p>43:14 Q. And in 2006, while you were the chief of</p> <p>43:15 the targeting and analysis group, sitting here</p> <p>43:16 today, you're not aware of any investigation or</p> <p>43:17 use of ARCOS data or monthly monitoring of the</p> <p>43:18 pharmacies and doctors that were identified in</p> <p>43:19 the termination notices; is that correct?</p>	<p>Re: [43:14 to 43:19]</p> <p>Relevance; Scope (witness not designated for this topic); Argumentative; Compound</p>	<p>Re: [43:14 to 43:19]</p> <p>The question is not argumentative or compound. The question is within the scope of the noticed topic, which relates to information provided to distributors by the DEA and the reasons why "the DEA stopped providing that information (see 15:11-19). This topic includes questioning about whether the DEA believed the information about a termination was relevant and warranted further action. The question is directly relevant to the issues of this case, including</p>
<p>43:24 - 43:24</p> <p>43:24 THE WITNESS: That's correct.</p>	<p>Re: [43:24 to 43:24]</p> <p>Relevance; Scope (witness not designated for this topic); Argumentative; Compound</p>	<p>Re: [43:24 to 43:24]</p> <p>Please see prior response.</p>

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<p>44:23 - 44:25</p> <p>44:23 Q. Would you agree that ARCOS data would</p> <p>44:24 have been helpful to distributors to identify</p> <p>44:25 potential diversion?</p>	<p>Re: [44:23 to 44:25]</p> <p>Speculation; Scope (witness not designated for this topic); Calls for Expert Opinion; Vague</p>	<p>Re: [44:23 to 44:25]</p> <p>The question does not call for speculation or expert opinion, as it asks for the personal knowledge of the DEA's Chief of the Targeting and Analysis Group (see 17:24-18:8), which analyzes ARCOS data. Notably, the experts qualified in this case to opine on methods to prevent diversion were qualified based on their experience at the DEA. The question is within the scope of the noticed topic, which relates to information provided to distributors by the DEA and the reasons why the DEA stopped providing that information (see 15:11-19), which includes questioning about the relevance of different DEA data sources. At minimum, however, the question and answer can be considered in Ms. Howard's personal capacity, given her senior DEA role.</p>
<p>45:04 - 45:04</p> <p>45:04 THE WITNESS: Yes.</p>	<p>Re: [45:04 to 45:04]</p> <p>Speculation; Scope (witness not designated for this topic); Calls for Expert Opinion; Vague</p>	<p>Re: [45:04 to 45:04]</p> <p>Please see prior response.</p>
<p>45:06 - 45:13</p> <p>45:06 Q. Now, DEA stopped sending termination</p> <p>45:07 notices to distributors, correct?</p> <p>45:08 A. Correct.</p> <p>45:09 Q. And do you know when the DEA stopped</p> <p>45:10 sending termination notices to distributors?</p> <p>45:11 A. Based on the DEA records that I</p> <p>45:12 reviewed, it appears that it ceased in</p> <p>45:13 December 2007.</p>		
<p>47:02 - 48:03</p> <p>47:02 Q. Why did DEA stop sending the termination</p> <p>47:03 notices to distributors?</p> <p>47:04 A. Based on my review of the DEA records,</p> <p>47:05 it appears the notification process ceased</p> <p>47:06 because diversion investigators in the field</p> <p>47:07 expressed concern about the notification, and</p> <p>47:08 individuals on the listing were legitimate</p> <p>47:09 pharmacies or doctors and needed their product</p> <p>47:10 for legitimate medical purposes.</p> <p>47:11 Also, the threat of potential</p> <p>47:12 litigation. And -- that's it for now, if I</p> <p>47:13 can -- yeah.</p> <p>47:14 Q. And what were the concerns of the</p> <p>47:15 diversion investigators?</p> <p>47:16 A. That registrants that were identified</p> <p>47:17 had legitimate purposes for ordering product and</p>	<p>Re: [47:02 to 48:03]</p> <p>Hearsay; Speculation</p>	<p>Re: [47:02 to 48:03]</p> <p>The statements referenced in Ms. Howard's testimony are not hearsay because they are not offered for the truth, but for effect on the listener in relation to why the DEA chose to stop sharing information about terminating sales to pharmacies with distributors. The question and answer does not call for speculation, as Ms. Howard is a designated 30(b)(6) witness on this topic (15:11-19) and had the</p>

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47:18	they should not be blacklisted.		requisite knowledge to answer this question on behalf of the DEA in light of her review of records and position as the Chief of the Targeting and Analysis unit.
47:19	Q. And you mentioned the threat of		
47:20	potential litigation. Did I hear that		
47:21	correctly?		
47:22	A. That's correct.		
47:23	Q. What was the threat of potential		
47:24	litigation that you mentioned?		
47:25	A. In my review of some of the DEA records,		
48:01	Kyle Wright mentioned that once the notification		
48:02	termination memos were distributed, pharmacies		
48:03	and DEA registrants threatened to sue him.		
49:02 - 49:05			
49:02	Q. Was the threat of litigation, was that	Re: [49:02 to 49:05] Argumentative; Calls for Legal Conclusion; Speculation; Vague; Compound	Re: [49:02 to 49:05] The question is not argumentative, vague, or compound, and it does not call for a legal conclusion. The question seeks factual knowledge regarding why the DEA took an action.
49:03	threat too scary for the DEA so that it decided		
49:04	it would stop sending the termination notices to		
49:05	distributors?		
49:08 - 49:09			
49:08	THE WITNESS: I believe it contributed	Re: [49:08 to 49:09] Argumentative; Calls for Legal Conclusion; Speculation; Vague; Compound	Re: [49:08 to 49:09] Please see prior response.
49:09	to ceasing sending out the notifications.		
50:12 - 50:16			
50:12	Q. The DEA -- Ms. Howard, did the DEA stop	Re: [50:12 to 50:16] Calls for Legal Conclusion; Speculation; Vague; Compound	Re: [50:12 to 50:16] The question is not vague or compound, and it does not call for a legal conclusion. The question seeks factual knowledge regarding why the DEA took an action.
50:13	sending distribution notices after hearing		
50:14	concerns about the threat of litigation against		
50:15	the DEA from pharmacies and doctors that were		
50:16	identified in the termination notices?		
50:19 - 50:21			
50:19	THE WITNESS: That was one of the	Re: [50:19 to 50:21] Calls for Legal Conclusion; Speculation; Vague; Compound	Re: [50:19 to 50:21] Please see prior response.
50:20	reasons. It appears that they ceased sending		
50:21	the notifications.		